

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appellant : Parker, Jane Smith

T.C. Art Unit : 3627

Appl. No. : 10/735,405

Examiner : Danneman, Paul

Filed : December 12, 2003

Confirmation No. : 2122

For : PAYROLL BASED ON COMMUNICATION SWITCH STATISTICS

**APPEAL BRIEF UNDER 37 C.F.R. §41.37**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Appeal Brief - Patents  
Randolph Building  
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Alexandria, VA 22314

Sir:

This appeal is from the rejection of claims 1-22, as set forth in the Final Official Action of January 25, 2008, and as maintained in the Advisory Action dated May 29, 2008.

A Notice of Appeal was filed on July 22, 2008 in response to the Final Official Action of January 25, 2008, and the (two-month) period for filing an Appeal Brief, having been set to expire on September 22, 2008, has been extended by the Request for a (one-month) Extension of Time filed concurrently herewith to expire on October 22, 2008. The requisite fee for filing an Appeal Brief under 37 C.F.R. §41.20(b)(2) is submitted herewith.

However, if for any reason the necessary fee is not associated with this file or the fee as submitted is inadequate, the Commissioner is authorized to charge the fee for the Appeal Brief and any necessary extension of time fees to Deposit Account No. 19-0089.

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**I. REAL PARTY IN INTEREST**

The real party in interest is AT&T Intellectual Property I, L.P. (formerly known as AT&T Knowledge Ventures, L.P. (formerly known as SBC Knowledge Ventures, L.P. as established by a Change of Name recorded in the U.S. Patent and Trademark Office on March 13, 2006, at Reel 017652 and Frame 0775)).

**II. RELATED APPEALS AND INTERFERENCES**

Appellant is not aware of any prior or pending appeals, interferences, or judicial proceedings that may be related to, directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF THE CLAIMS**

Claims 1-22, all of the claims pending in this application, were provisionally rejected on the ground of non-statutory obviousness-type double patenting. However, the provisional rejection has been held in abeyance pending prosecution of the present application.

Claims 1-22 stand finally rejected under 35 U.S.C. § 103(a) and are the subject of this appeal. Appellant appeals the final rejection of claims 1-22. A copy of claims 1-22 is attached as an Appendix to this brief.

**IV. STATUS OF THE AMENDMENTS**

No amendments to the claims were filed under 37 C.F.R. § 1.116 after the final rejection of the claims of January 25, 2008.

**V. SUMMARY OF THE CLAIMED SUBJECT MATTER**

Initially, Appellant notes that the following descriptions are made with respect to the independent claims and include references to particular parts of the specification. As such, the following are merely exemplary and are not a surrender of other aspects of the present invention that are also enabled by the present specification as well as those that are directed to equivalent structures or methods.

Independent claim 1 recites a payroll system comprising: logic configured to obtain a set of switching statistics from a database of a communications switch; logic configured to obtain a set of work statistics of an operator; logic configured to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics; and logic configured to determine when the operator efficiency parameter exceeds an expected efficiency parameter.

In this regard, exemplary embodiments of the present specification are shown in FIGS. 1-6, and disclosed at page 5, line 18 to page 20, line 5. The exemplary embodiments disclose a payroll system comprising: logic configured to obtain switching statistics (*e.g.*, call-statistics as described at page 7, line 34 to page 8, line 1; page 14, line 28 to page 15, line 3) from a communications switch (111) (page 7, line 30 to page 8, line 1; page 16, lines 3-6; page 17, lines 6-7); logic configured to obtain work statistics (*e.g.*, call-handling-statistics as described at page 8, lines 2-3; page 17, lines 21-25; page 18, lines 30-33) of an operator in a call center (130) (page 7, line 30 to page 8, line 8; page 10, lines 7-14); logic configured to determine the efficiency of the operator in the call

center (130) by integrating the switching statistics obtained from the communications switch (111) and the work statistics obtained of the operator in the call center (130) (page 17, line 26 to page 18, line 16; page 19, lines 18-30); and logic configured to determine when the efficiency of the operator exceeds an expected efficiency (page 18, lines 17-25; page 19, lines 18-30).

Independent claim 8 recites a method of operating a payroll system, the method comprising: obtaining a set of switching statistics from a database of a communications switch; obtaining a set of work statistics of an operator; determining an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics; and providing a bonus payment to the operator when the operator efficiency parameter exceeds an expected efficiency parameter.

In this regard, exemplary embodiments of the present specification are shown in FIGS. 1-6, and disclosed at page 5, line 18 to page 20, line 5. The exemplary embodiments disclose a method of operating a payroll system comprising: obtaining switching statistics (*e.g.*, call-statistics as described at page 7, line 34 to page 8, line 1; page 14, line 28 to page 15, line 3) from a database (308) of a communications switch (111) (page 7, line 30 to page 8, line 1; page 16, lines 3-6; page 17, lines 6-7); obtaining a set of work statistics (*e.g.*, call-handling-statistics as described at page 8, lines 2-3; page 17, lines 21-25; page 18, lines 30-33) of an operator (page 7, line 30 to page 8, line 8; page 10, lines 7-14); determining (515) an operator efficiency parameter by integrating the switching statistics with the work statistics (page 17, line 26 to page 18, line 16; page

19, lines 18-30); and providing (525) a bonus to the operator if the operator efficiency parameter exceeds an expected efficiency parameter (page 18, lines 17-25; page 19, lines 18-30).

Independent claim 17 recites a payroll system stored on a computer-readable medium, the system comprising: computer-readable code that configures a device to obtain a set of switching statistics from a database of a communications switch; computer-readable code that configures the device to obtain a set of work statistics of an operator; computer-readable code that configures the device to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics; and computer-readable code that configures the device determine when the operator efficiency parameter exceeds an expected efficiency parameter.

In this regard, exemplary embodiments of the present specification are shown in FIGS. 1-6, and disclosed at page 5, line 18 to page 20, line 5. The exemplary embodiments disclose a computer readable medium comprising: computer-readable code that configures a device to obtain a set of switching statistics (*e.g.*, call-statistics as described at page 7, line 34 to page 8, line 1; page 14, line 28 to page 15, line 3) from a database (308) of a communications switch (111) (page 7, line 30 to page 8, line 1; page 16, lines 3-6; page 17, lines 6-7); computer-readable code that configures the device to obtain a set of work statistics (*e.g.*, call-handling-statistics as described at page 8, lines 2-3; page 17, lines 21-25; page 18, lines 30-33) of an operator (page 7, line 30 to page 8, line 8; page 10, lines 7-14); computer-readable code that configures the device to

determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics (page 17, line 26 to page 18, line 16; page 19, lines 18-30); and computer-readable code that configures the device determine when the operator efficiency parameter exceeds an expected efficiency parameter (page 18, lines 17-25; page 19, lines 18-30).

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1, 3-15, 17 and 19-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,490,350 to McDuff et al. (hereinafter "MCDUFF"). With respect to this rejection, the Examiner did not include claim 17 within the listing of the rejected claims in the heading of this rejection; however, the Examiner did discuss claim 17 as being rejected within the body of this rejection. In this Appeal Brief, Appellant has assumed claim 17 was intended to be rejected under 35 U.S.C. 103(a) as being unpatentable over MCDUFF.

Claims 2, 16, and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over MCDUFF in view of U.S. Pat. Appl. Pub. No. 2001/0032120 to Stuart et al. (hereinafter "STUART").

## VII. ARGUMENT

### *A. Claims 1, 3-15, 17, and 19-22 are Patentable under 35 U.S.C. § 103(a) over MCDUFF*

#### **1. Independent Claims 1, 8, and 17 are not Disclosed or Rendered Obvious by MCDUFF**

Independent claims 1, 8, and 17 generally and respectively recite a payroll system, a method of operating a payroll system, and a payroll system stored on a computer-readable medium wherein a set of switching statistics is received from a database of a communications switch and a set of work statistics of an operator is also received.

#### **a) MCGUFF does not Disclose or Render Obvious Integrating a Set of Switching Statistics with a Set of Work Statistics to Determine an Operator Efficiency Parameter**

Additionally, independent claims 1, 8, and 17 respectively recite: the “payroll system comprising . . . logic configured to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics”; the “method of operating a payroll system . . . comprising . . . determining an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics”; and the “payroll system stored on a computer-readable medium . . . comprising . . . computer-readable code that configures the device to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics. MCDUFF does not disclose, suggest, or render obvious these features for at least the reasons set forth

below. The Final Official Action incorrectly asserts that these features are disclosed by MCDUFF.

MCDUFF discloses "a computerized monitoring system for monitoring telephony resources in a call center. . . . [wherein the system] may gather status information and statistics regarding the calling activity of agents within the call center" (MCDUFF, col. 1, lines 35-38). More particularly, MCDUFF discloses a telecommunications system 10 including a switching mechanism 16 for routing calls to operators 20 within the telecommunications system 10 (MCDUFF, col. 1, lines 65-68). The telecommunication system 10 includes a computer telephony integration (CTI) server 30 which extracts raw call data from the switching mechanism 16 into useful statistical data (MCDUFF, col. 3, lines 55-57). A CTI monitoring server (CTIMS) 36 compiles the statistical data that is collected by the CTI server 30 into data for presentation and management by a monitoring system client 51 (MCDUFF, col. 3, line 65 to col. 4, line 5).

According to MCDUFF, the monitoring system client 51 uses the statistical data gathered by the CTIMS 36 to generate a graphical user interface (GUI) which displays two types of information: (i) state change information that indicates a change in the state of an agent which generally is one of unavailable, available, on call, call work, error, or unknown; and (ii) work statistics of an operator including the operator's name, average handling time, average work time, and average talk time (MCDUFF, col. 5, lines 15-67 and col. 3, lines 19-22). The graphical representation of the state change information and

the work statistics of an operator enable a supervisor to more efficiently monitor the activity within the telecommunications system 10 (MCDUFF, col. 1, lines 34-43).

Even if, assuming for the sake of argument, the state change information is considered to be switching statistics of a communications switch, MCDUFF fails to disclose the specific function of integrating the switching statistics with the work statistics to determine an operator efficiency parameter as recited by the claims. To the contrary, MCDUFF merely discloses gathering the switching statistics and the work statistics and displaying the switching statistics and the work statistics independently of one another in a GUI. According to MCDUFF, the state change information and the work statistics are gathered and displayed in a logical organization (MCDUFF, Figs. 13-20), however, the state change information and the work statistics are not integrated in any manner whatsoever.

The Official Actions of January 25, 2008 and September 21, 2007 even acknowledge that MCDUFF fails to disclose integrating the set of switching statistics with the set of work statistics to determine an operator efficiency. However, the Official Actions allege that the above-recited feature is obvious because MCDUFF discloses (1) gathering switching statistics; (2) gathering work statistics; and (3) generating a report displaying the statistics to help monitor a telecommunications system. Appellant respectfully disagrees with such an allegation of obviousness, as MCDUFF discloses nothing more than presenting statistics in a GUI. MCDUFF does not make any mention

whatsoever of integrating the switching statistics with the working statistics to determine an operator efficiency as recited by claims 1, 8, and 17.

**b) MCDUFF does not Disclose or Render Obvious Determining when the Operator Efficiency Parameter Exceeds an Expected Efficiency Parameter**

Furthermore, independent claims 1, 8, and 17 respectively recite: the “payroll system comprising . . . logic configured to determine when the operator efficiency parameter exceeds an expected efficiency parameter”; the “method of operating a payroll system . . . comprising . . . providing a bonus payment to the operator when the operator efficiency parameter exceeds an expected efficiency parameter”; and the “payroll system stored on a computer-readable medium . . . comprising . . . computer-readable code that configures the device to determine when the operator efficiency parameter exceeds an expected efficiency parameter.” MCDUFF also does not disclose, suggest, or render obvious these features for at least the reasons set forth below.

As discussed *supra*, MCDUFF discloses a telecommunications monitoring system relating to collecting and reporting data. Operator efficiency levels are not even alluded to in MCDUFF, accordingly, MCDUFF certainly fails to disclose determining when an operator’s efficiency parameter exceeds an expected efficiency parameter.

**c) The Examiner has not Established a Prima Facie Rejection of Claims 1, 8, and 17 Under 35 U.S.C. § 103(a)**

The Examiner does not provide proper reasons why independent claims 1, 8, and 17 would be obvious in light of MCDUFF. Rather, the Examiner merely concludes that

it would have been obvious to one skilled in the art at the time the invention was made to integrate a set of switching statistics with a set of working statistics to determine an operator efficiency parameter and to determine if the operator efficiency parameter exceeds an expected operator efficiency parameter. The Examiner is relying upon impermissible hindsight by relying upon the disclosed advantages of the claims 1, 8, and 17, as provided in Appellant's own specification, as a roadmap for determining obviousness in light of MCDUFF.

As explained in Section 2142 of the MPEP:

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, ...[127 S. Ct. 1727 (2007)], 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Furthermore, upon review of the exemplary rationales provided in MPEP § 2143, which have been reproduced below for convenience:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design

incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

it appears that the Examiner has not relied upon any of these exemplary rationales. Although this list is not an exhaustive list of rationales used to support a prima facie case of obviousness, this list simply accentuates that, in the present case, the Examiner has not provided a "clear articulation of the reason(s) why the claimed invention would have been obvious," as set forth in section 2141 of the MPEP and the Supreme Court's decision in KSR International. To the contrary, the Examiner merely focuses upon the advantages of the present application in making an obviousness determination of claims 1, 8, and 17 in light of MCDUFF, which the Examiner acknowledges does not teach or even suggest all of the elements of the claims. This is the very definition of impermissible hindsight.

For at least these reasons, MCDUFF fails to disclose, suggest, or render obvious a payroll system, a method of operating a payroll system, or a payroll system stored on a computer-readable medium wherein a set of switching statistics is integrated with a set of working statistics to determine an operator efficiency parameter and wherein it is determined whether the operator efficiency parameter exceeds an expected efficiency parameter as recited in independent claims 1, 8, and 17.

**2. Dependent Claims 3-7, 9-15, and 19-22 are not Disclosed or Rendered Obvious by MCDUFF**

The rejection of dependent claims 3-7, 9-15, and 19-22 under 35 U.S.C. § 103(a) as unpatentable over MCDUFF is in error, and the decision of the Examiner to reject these claims should be reversed.

Claims 3-7, 9-15, and 19-22 are each directly or indirectly dependent upon one of independent claims 1, 8, and 17 and include the subject matter recited therein. Therefore, the obviousness rejection based upon claims 3-7, 9-15, and 19-22 is without appropriate basis for at least the reasons set forth by Appellant with respect to independent claims 1, 8, and 17.

***B. Claims 2, 16, and 18 are Patentable under 35 U.S.C. § 103(a) over MCDUFF in view of STUART***

The rejection of claims 2, 16 and 18 under 35 U.S.C. § 103(a) as unpatentable over MCDUFF in view of STUART is in error, and the decision of the Examiner to reject these claims should be reversed.

Claims 2, 16 and 18 are each directly or indirectly dependent upon one of independent claims 1, 8 and 17 and include the subject matter recited therein. Appellant has noted above the reasons why MCDUFF does not render obvious independent claims 1, 8 and 17.

The Official Actions of January 25, 2008 and September 21, 2007 acknowledge that MCDUFF does not teach calculating a bonus payment to an operator as recited in dependent claims 2 and 18. The Official Actions also acknowledge MCDUFF does not

teach the set of operator-specific information including at least one of an employment seniority grade, an operator attendance data, and an operator-generated monthly revenue as recited in dependent claim 16. In this regard, the Official Action relies on STUART only to teach calculating a bonus payment to an operator as recited in claims 2 and 18 and the set of operator-specific information including at least one of an employment seniority grade, an operator attendance data, and an operator-generated monthly revenue as recited in claim 16. Therefore, STUART fails to remedy the deficiencies of MCDUFF as discussed above. Specifically, STUART does not teach or render obvious integrating a set of switching statistics and a set of working statistics to determine an operator efficiency parameter or determining when the operator efficiency parameter exceeds an expected efficiency parameter. Accordingly, the combination of MCDUFF and STUART fails to disclose or render obvious all of the elements of claims 2, 16 and 18.

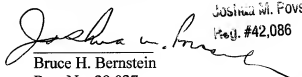
### ***C. Conclusion***

Each of claims 1-22 is patentable for the reasons set forth herein. Specifically, claims 1, 3-15, 17, and 19-22 are not disclosed nor rendered obvious by MCDUFF, and claims 2, 16, and 18 are not disclosed nor rendered obvious by MCDUFF in view of STUART.

Accordingly, Appellant respectfully requests that the Board reverse the decision of the Examiner to reject claims 1-22.

If there are any questions about this application, any representative of the U.S. Patent and Trademark Office is invited to contact the undersigned at the telephone number listed below.

Respectfully Submitted,  
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## **VIII. CLAIMS APPENDIX**

1. A payroll system comprising:

logic configured to obtain a set of switching statistics from a database of a communications switch;

logic configured to obtain a set of work statistics of an operator;

logic configured to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics;

logic configured to determine when the operator efficiency parameter exceeds an expected efficiency parameter.

2. The system of claim 1, further comprising logic configured to calculate a bonus payment to the operator.

3. The system of claim 1, further comprising:

logic configured to generate an operator-specific, quantity-parameter from the set of switching statistics;

logic configured to generate an operator-specific, quality-parameter based on the set of work statistics of the operator;

logic configured to determine the operator efficiency parameter by integrating the operator-specific, quantity-parameter with the operator-specific, quality-parameter; and

logic configured to determine the expected efficiency parameter of the operator based on a set of operator-specific information.

4. The system of claim 3, wherein the communications switch is a POTS switch located in a telephone central office, and wherein the set of switching statistics comprises telephone call statistics contained in the database of the POTS switch.

5. The system of claim 4, wherein the operator-specific, quality-parameter comprises a time of handling a set of telephone calls from customers.

6. The system of claim 4, wherein the set of operator-specific information includes at least one of an employment seniority grade, an operator attendance data, and an operator-generated monthly revenue.

7. The system of claim 1, further comprising:

means for generating an operator-specific, quantity-parameter from the set of switching statistics;

means for generating an operator-specific, quality-parameter based on the set of work statistics of the operator;

means for determining the operator efficiency parameter by integrating the operator-specific, quantity-parameter with the operator-specific, quality-parameter; and

means for determining the expected efficiency parameter of the operator based on a set of operator-specific information.

8. A method of operating a payroll system, the method comprising:  
obtaining a set of switching statistics from a database of a communications switch;  
obtaining a set of work statistics of an operator;  
determining an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics;  
providing a bonus payment to the operator when the operator efficiency parameter exceeds an expected efficiency parameter.

9. The method of claim 8, further comprising:  
generating an operator-specific, quantity-parameter from the set of switching statistics;  
generating an operator-specific, quality-parameter based on the set of work statistics of the operator;  
determining the operator efficiency parameter by integrating the operator-specific, quantity-parameter with the operator-specific, quality-parameter; and  
determining the expected efficiency parameter of the operator based on a set of operator-specific information.

10. The method of claim 9, wherein the communications switch is a POTS switch located in a telephone central office, and wherein the set of switching statistics comprises telephone call statistics contained in the database of the POTS switch.

11. The method of claim 10, wherein the operator-specific, quality-parameter comprises a time of handling a set of telephone calls from customers.

12. The method of claim 10, wherein the set of operator-specific information includes at least one of an employment seniority grade, an operator attendance data, and an operator-generated monthly revenue.

13. The method of claim 9, wherein the communications switch is a packet switch in a data network, and wherein the set of switching statistics comprises switch usage information contained in the database of the communications switch.

14. The method of claim 9, wherein the communications switch is a server of a client-server data network, and wherein the set of switching statistics comprises switch usage information contained in the database of the communications switch.

15. The method of claim 14, wherein operator-specific, quality-parameter

comprises a time of servicing a set of communications switch customer work requests.

16. The method of claim 14, wherein the set of operator-specific information includes at least one of an employment seniority grade, an operator attendance data, and an operator-generated monthly revenue.

17. A payroll system stored on a computer-readable medium, the system comprising:

computer-readable code that configures a device to obtain a set of switching statistics from a database of a communications switch;

computer-readable code that configures the device to obtain a set of work statistics of an operator;

computer-readable code that configures the device to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics;

computer-readable code that configures the device determine when the operator efficiency parameter exceeds an expected efficiency parameter.

18. The system of claim 17, further comprising computer-readable code that configures the device to calculate a bonus payment to the operator.

19. The system of claim 17, further comprising:

computer-readable code that configures the device to generate an operator-specific, quantity-parameter from the set of switching statistics;

computer-readable code that configures the device to generate an operator-specific, quality-parameter based on the set of work statistics of the operator;

computer-readable code that configures the device to determine the operator efficiency parameter by integrating the operator-specific, quantity-parameter with the operator-specific, quality-parameter; and

computer-readable code that configures the device to determine the expected efficiency parameter of the operator based on a set of operator-specific information.

20. The system of claim 17, wherein the communications switch is a POTS switch located in a telephone central office, and wherein the set of switching statistics comprises telephone call statistics contained in the database of the POTS switch.

21. The system of claim 20, wherein the operator-specific, quality-parameter comprises a time of handling a set of telephone calls from customers.

22. The system of claim 20, wherein the set of operator-specific information

includes at least one of an employment seniority grade, an operator attendance data, and an operator-generated monthly revenue.

**IX. EVIDENCE APPENDIX**

None

**X. RELATED PROCEEDING APPENDIX**

None